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February 1, 2023

Bellingham Conservation Commission
10 Mechanic Street
Bellingham, MA 02019 via USPS and email: AMatthews@bellinghamma.org

Re: Prospect Hill Subdivision Notice of Intent

Subject: Response to BSC Comment Letters

Dear Commission Members:

The following is a comprehensive response to the review letters issued by BSC related to the Prospect Hill Subdivision Notice of Intent (“NOI”) filed by Wall Street Development. Note that this letter addresses issues related only to NOI non-engineering matters.

For brevity, I use the following shorthand:

- BVW = Bordering Vegetated Wetland
- BLSF = Bordering Land Subject to Flooding
- RFA = Riverfront Area
- Regulations = Massachusetts Wetland Regulations – 310 CMR 10.00

Because certain issues have been resolved during the review process, BSC comment letters are listed in reverse chronological order. BSC comments are numbered in accordance with the numbering in the BSC letters, and provided verbatim, with responses immediately following each comment.

January 15, 2023, BSC REVIEW LETTER

Comment 1: The Project is not eligible for Limited Project status and must meet the performance standards for work proposed in Bordering Vegetated Wetland, Bordering Land Subject to Flooding, and Riverfront Area at 310 CMR 10.55, 10.57, and 10.58, respectively.

Response: BSC’s comment 1 appears to be based on the statement above it (top of page 4) that Alternatives 3 and 4 “provide a reasonable alternative means of access from a public way to the upland area of the same owner.” While “reasonable” is not defined in the Wetland Regulations, this conclusion appears to discount the economic considerations that are consistently part of the review process for environmental permitting (e.g., RFA, Water Quality Certification, where economic considerations are explicitly cited). In our opinion, the additional cost of the longer road required for

Alternative 4, or the reduced revenue that would result from Alternative 3 make each of those alternatives financially infeasible and therefore unreasonable.

Notwithstanding, the project complies with the BVW replication and BLSF mitigation provisions. BVW replication in accordance with the provisions of 10.55(4)(b) and incremental floodplain mitigation in accordance with 10.57(4)(a) are provided.

Comment 2: It is the opinion of BSC that the Riverfront Area on the project site is functioning to protect the interests of M.G.L. c. 131 §40 and the Bellingham Wetlands Protection Bylaw despite the absence of a discernable A-horizon in the soil profile. Riverfront area on this site is significant to the protection of private and public water supply; to the protection of groundwater; to providing flood control; to the prevention of storm damage; to the prevention of pollution; and to the protection of wildlife habitat. BSC therefore recommends that the Applicant demonstrate compliance with the performance standards for work in Riverfront Area at 310 CMR 10.58(4).

Response: BSC concurs with the delineation of degraded RFA, and recognizes that degraded RFA at the site includes areas of bare (unvegetated) soil as well as areas with early colonizing vegetation. However, BSC states (top of page 6) that *“there is no substantive loss of the wetland functional values ... on display at this site.”* We disagree, and note that in just the first paragraph of the Preamble to the RFA Regulations the words “vegetation” or “plant” occur four (4) times. The RFA Regulations make clear that much of the function of RFA is dependent upon vegetation, and that lack of vegetation represents a substantive loss to function.

Because previously developed and degraded RFA occurs at the site and is proposed to be redeveloped, the redevelopment provisions of 10.58(5) apply to the project in its entirety. This matter has been adjudicated to reach this conclusion. As outlined in the attached *RFA Redevelopment and Mitigation Specifications* it is our opinion that the project’s mitigating measures, including BVW replication, large box culvert, and RFA renaturalization of bare, unvegetated sand areas represents an improvement relative to existing conditions, and is eligible for approval under 10.58(5).

Comment 3: Notwithstanding Comment 2, BSC recommends that the Commission apply redevelopment performance standards only to those portions of the riverfront area that are determined to be degraded; i.e., to those portions of the riverfront where the presumption of significance at 310 CMR 10.58(3) is successfully rebutted.

Response: As noted above, we believe that the project (not merely portions of the project) is subject to 10.58(5). The matter has been adjudicated.

Comment 4: BSC recommends that the Applicant submit a complete, up to date, and final revised plan set for review of the project under M.G.L. c. 131 §40 and the Bellingham Wetlands Protection Bylaw along with a clear table showing proposed impact calculations for riverfront area and BVW.

Response: The current plan set (10/11/2022) includes 40-scale plans of existing and proposed conditions at all proposed wetland and Buffer Zone impact areas (sheets 18, 19,

23, 24, and 25). Proposed wetland impacts are specified on the plans, Wetland Replication protocol, and RFA Degraded Area Impacts and Mitigation Summary and Analysis.

Comment 5: BSC recommends that the complete, up to date, and final-revised plan set show the existing conditions and proposed work at a scale of one inch equals 40 feet (1:40 scale) maximum.

Response: see response to Comment 4.

Comment 6: The Applicant should provide a more robust evaluation costs associated with alternatives under consideration in accordance with the requirements specified at 310 CMR 10.58(4)(c)1.

Response: It remains our opinion that because the project is a RFA redevelopment, review under 10.58(5) is appropriate, and that the alternatives analysis provisions of 10.58(4) do not apply.

Comment 7: The Applicant should specifically address the requirements of the Scope of Alternatives for work proposed in Riverfront Area to demonstrate that the alternatives under consideration meet the regulatory requirements discussed above.

Response: It remains our opinion that because the project is a RFA redevelopment, review under 10.58(5) is appropriate, and that the alternatives analysis provisions of 10.58(4) do not apply.

Comment 8: BSC recommends that the Applicant demonstrate that the project meets the No Significant Adverse Impact performance standard at 310 CMR 10.58(d), including verification that less than 10% of the riverfront area on the project site would be altered and should demonstrate compliance with requirements at 310 CMR 10.58(d)(1), and provide updated analysis of impacts proposed within BLSF and BVW.

Response: It remains our opinion that because the project is a RFA redevelopment, review under 10.58(5) is appropriate, and that the No Significant Adverse Impact provisions of 10.58(4) do not apply.

Comment 9: BSC recommends that the Applicant submit a clear tabular evaluation of the extent of jurisdictional resource areas in existing conditions and under proposed conditions to enable an adequate evaluation of the extent of wetland replacement required under proposed conditions, and relative to the proposed planting plan contained in the Wetland Replication Protocol letter.

Response: The plans and wetland replication protocol clearly indicate that the proposed BVW impact is 580 sf (340 sf on north side of the crossing and 240 sf on south side), conservatively calculated to include the stream channel. The proposed BVW replication is described on the plans and replication protocol as 1,200 sf, in compliance with state

and local replication requirements. RFA impacts and mitigation are summarized in the RFA Degraded Area Impacts and Mitigation Summary and Analysis.

DECEMBER 14, 2022, BSC REVIEW LETTER

Notice of Intent Comments are limited to stormwater management, which is not discussed here.

NOVEMBER 14, 2022 BSC SUPPLEMENTAL LETTER 2 - Wetlands Enforcement Order

The letter states that “This supplemental letter specifically addresses the Enforcement Order...” and is therefore not discussed in this NOI response submission.

OCTOBER 28, 2022, BSC REVIEW LETTER

This letter was limited to a discussion of the delineation of Mean Annual High Water in the area upstream of the crossing. Concurrence regarding this matter has been achieved (see EcoTec letter dated December 8, 2022) so no additional response is required.

AUGUST 11, 2022, BSC REVIEW LETTER

This review letter included comments directed to the Bellingham Conservation Commission (“BCC”) as well as to the Planning Board. Only non-engineering comments germane to the BCC wetland review under the letter’s “Notice of Intent” heading are discussed here.

Comment 1: BLSF associated with the southern un-named stream is not clearly shown or labeled on the Site Plan. BSC recommends that this resource be clearly shown and labeled.

Response: The current plan shows BLSF, with elevations, in the vicinity of the proposed work.

Comment 2: BSC recommends that Project Plans be updated to show all jurisdictional resource buffer zones and should be made consistent on all Plan Sheets.

Response: The current plan set includes all jurisdictional areas and we believe all plan sheets are consistent.

Comment 3: BSC recommends using field indicators of flooding, including bank undercutting and vegetation and soil characteristics to establish the Mean Annual High-water Line for purposes of establishing the lateral extent of the perennial stream in the vicinity of the crossing. Inner and Outer Riparian areas will need to be evaluated based on an agreed-upon Mean Annual High-water Line.

Response: This issue has been addressed

Comment 4: BSC notes that the FEMA National Flood Hazard data includes 100-year Floodplain associated with the unnamed stream and pond on the southern portion of the site. BLSF must be shown and clearly labeled on Site Plans for the Project.

Response: The current plan shows BLSF, with elevations, in the vicinity of the proposed work. See comment 1.

Comment 5: BSC recommends that the Applicant provide an evaluation of the isolated wetlands on the Site to verify jurisdiction as ILSF under the state regulations.

Response: The only isolated wetland on portions of the site germane to this NOI filing is wetland DE (flags DE-1 through DE-6) located in the northwest corner of the site. Under the state Regulations, this +/- 500-sf area is far too small to qualify as Isolated Land Subject To Flooding (“ILSF”). The Bylaw defines “ILSF” without regard to size; and also regulates Isolated Vegetated Wetland (“IVW”). IVW is more strictly protected under the Bylaw Regulations, and we have considered wetland DE to be an IVW (local) non-state wetland. No work is proposed near wetland DE.

Comment 6: BSC recommends that the Applicant provide a complete accounting for Riverfront Area on the Site, including both degraded and non-degraded Riverfront Area. A plan sheet should clearly distinguish all Riverfront Area proposed to be considered degraded.

Comment: The limits of degraded RFA on the site have been established in the field with BSC and are shown on the plans. Sheet 25 specifically depicts and tabulates degraded RFA in the project area.

Comment 7: BSC recommends that the applicant demonstrate the portions of the Riverfront Area on the Project Site that are eligible for the redevelopment provision according to 310 CMR 10.58(5) by providing a preponderance of the evidence showing what portions of the riverfront area on the Site were degraded by an absence of topsoil on or before August 7, 1996. A figure or plan sheet should be provided showing the redevelopment-eligible portions of Riverfront Area on the Site.

Comment: Degraded RFA occurs in two forms on the site, which we have labelled as “vegetated” and “unvegetated.” As noted by BCC and BSC, the vegetated areas include some pine trees which date to pre-1996. The 1995 aerial, previously provided to the BCC, shows the limits of the “unvegetated” area similar to (and more expansive) than the obvious open sand in the 1996 aerial). Portions of the 1995 and 2021 aerials are appended.

As noted elsewhere, it is our opinion that the entire project should be evaluated under the RFA redevelopment provisions at 10.58(5).

Comment 8: BSC recommends that the Applicant provide a report to accompany a Degraded Riverfront plan sheet that details the basis upon which the status of degraded Riverfront Area is being proposed. Such report should include photographs and/or other data demonstrating lack of topsoil at representative locations throughout designated areas and an explanation of how topsoil is being defined and evaluated. Riverfront Area lacking topsoil, typical of those portions of the Site that have been subject to sand and gravel extraction and that presently support no vegetation as discussed in the field may qualify as degraded if shown to have been degraded per the discussion above. Portions of Riverfront Area that presently support vegetative growth likely do not qualify as such.

Comment: Limits of Degraded RFA have been established in the field with BSC, as shown on the plans.

Comment 9: BSC recommends that the applicant flag the riverfront area resources in the field for review by a BSC Soil Scientist to confirm the absence of an A-Horizon within any portion of the Riverfront claimed as Redevelopment.

Comment: Limits of Degraded RFA have been established in the field with BSC, as shown on the plans.

Comment 10: BSC recommends that the Applicant provide a clear demonstration that the Alternative I utilizing two cul-de-sacs is not a “reasonable alternative to the proposed activity.” Such demonstration should include a robust and thorough economic analysis of both the Preferred Alternative and Alternative I and should also include a comparative analysis of the impacts to Riverfront Area, Bank, Bordering Vegetated Wetland, Bordering Land Subject to Flooding, and Buffer Zone to Bank and Bordering Vegetated Wetland proposed under both Alternatives.

Comment: The applicant has provided a review of alternatives and impact analysis commensurate with typical level of detail for such analyses.

Comment 11: BSC recommends that the applicant demonstrate, by a preponderance of the evidence, how proposed redevelopment within previously disturbed portions of the riverfront area will improve the capacity to protect the interests of the Act at 310 CMR 10.58(5).

Response: Proposed specifications (RFA Degraded Area Impacts and Mitigation Summary and Analysis) to renaturalize large areas of degraded RFA and satisfy the cited provision is being provided with this response letter.

Comment 12: BSC recommends that impacts to Riverfront Area and Buffer Zones protected under the Bellingham Wetlands Protection Bylaw be minimized to the greatest extent feasible.

Response: Impacts are minimized to the extent feasible, with conceptual locations of stormwater basins moved as far from the MAHW line as feasible.

AUGUST 8, 2022, JOINT PLANNING BOARD AND CONSERVATION COMMISSION REVIEW LETTER

Same comments as 8/11/2022 letter.

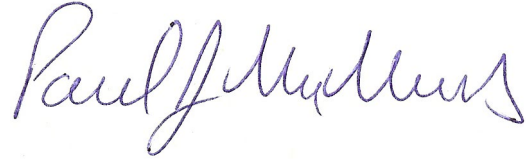
AUGUST 3, 2022 JOINT PLANNING BOARD AND CONSERVATION COMMISSION REVIEW LETTER

BSC Comment: As noted above, Notice of Intent review is ongoing, and this letter will be updated upon completion.

No response required.

I look forward to discussing this information with the Commission. Please contact me if you have any questions concerning this or other matters.

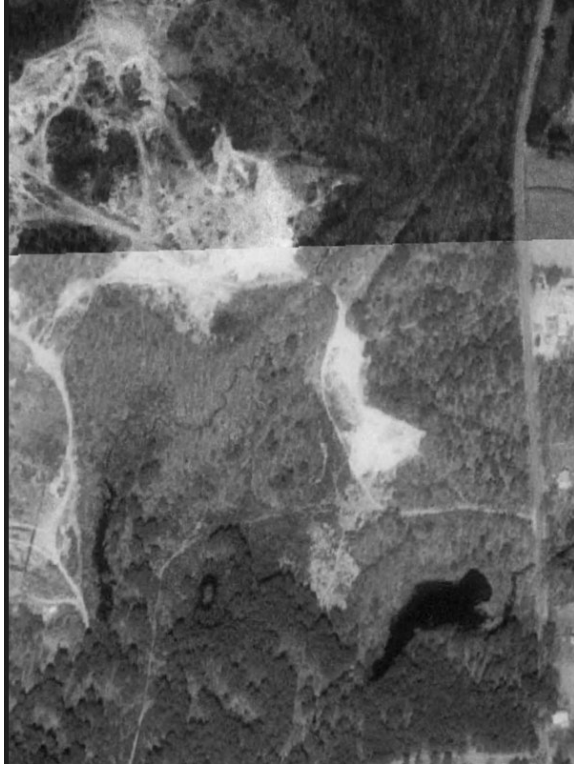
Sincerely,

A handwritten signature in blue ink, reading "Paul J. McManus". The signature is fluid and cursive, with the first name "Paul" and last name "McManus" clearly legible.

Paul J. McManus, LSP, PWS
President

- Enc: Portions of the 1995 and 2021 aerials
Flood Area Compensation Calculation by GLM Engineering
RFA Degraded Area Impacts and Mitigation Summary and Analysis
Colored plan sheets 18, 23, 24, 25 (note minor hand edits on hard copy, corrected on
PDFs) by GLM Engineering
- c: Matt Burne - BSC (by email)
Lou Petrozzi, Wall Street Development
Robert Truax, PE – GLM Engineering

1995 Aerial:



2021 Aerial From MassGIS



Project: Prospect Hill Estates
Bellingham, MA

Flood Area Compensation Calculation:

Flood Area Filled:

Elev. (ft.)	Area (s.f.)	Avg. Area (s.f.)	Vol. (cu.ft.)
222.0	82		
224.0	525	303.5	607

Flood Area Compensation:

Elev. (ft.)	Area (s.f.)	Avg. Area (s.f.)	Vol. (cu.ft.)
222.0	135		
224.0	1070	602.5	1205

Volume Filled = 607 cu.ft.

Volume Compensation = 1205 cu.ft.